

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

WALTER F. SIMMONS, Jr.,
Plaintiff,

v.

LARRY HULETTE, et. al.,
Defendants.

Case No. 16-cv-5249-NJV (PR)

**ORDER OF DISMISSAL
WITH LEAVE TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The court granted his motion to proceed in forma pauperis. (Doc. 6.)

DISCUSSION

Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although

in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Legal Claims

Plaintiff alleges that defendants have interfered with the manner in which he practices his religion.

In order to establish a free exercise violation, a prisoner must show a defendant burdened the practice of his religion without any justification reasonably related to legitimate penological interests. *See Shakur v. Schriro*, 514 F.3d 878, 883-84 (9th Cir. 2008). A prisoner is not required to objectively show that a central tenet of his faith is burdened by a prison regulation to raise a viable claim under the Free Exercise Clause. *Id.* at 884-85. Rather, the sincerity test of whether the prisoner’s belief is “sincerely held” and “rooted in religious belief” determines whether the Free Exercise Clause applies. *Id.* (finding district court impermissibly focused on whether consuming Halal meat is required of Muslims as a central tenet of Islam, rather than on whether plaintiff sincerely believed eating kosher meat is consistent with his faith). The prisoner must show that the religious practice at issue satisfies two criteria: (1) the proffered belief must be

1 sincerely held and (2) the claim must be rooted in religious belief, not in purely secular
2 philosophical concerns. *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (cited with approval in
3 *Shakur*, 514 F.3d at 884).

4 Inmates' religious freedoms also are protected by the Religious Land Use and
5 Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1. Section 3 of RLUIPA provides:
6 "No government shall impose a substantial burden on the religious exercise of a person residing in
7 or confined to an institution, as defined in section 1997 [which includes state prisons, state
8 psychiatric hospitals, and local jails], even if the burden results from a rule of general
9 applicability, unless the government demonstrates that imposition of the burden on that person
10 (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of
11 furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). For an RLUIPA
12 claim, the plaintiff-inmate must show that the government has imposed a substantial burden on his
13 religious exercise. A "'substantial burden' on 'religious exercise' must impose a significantly
14 great restriction or onus upon such exercise." *San Jose Christian College v. Morgan Hill*, 360
15 F.3d 1024, 1034 (9th Cir. 2004).

16 Plaintiff claims that he has been denied a proper traditional Lakota Inipi Purification
17 Ceremony, has been denied access to a drum circle and talking circle, that there is only an
18 incompetent non-Indian spiritual advisor, that he cannot obtain medicine and materials for
19 ceremonies and traditions, and that he has been denied freedom of expression and due process.
20 Plaintiff names five defendants but fails to identify what claims and allegations pertain to each
21 defendant other than one brief statement about the spiritual advisor, Larry Hulette. While plaintiff
22 has included various exhibits, the specific nature of his allegations and the actions of the
23 individual defendants are not clear.

24 The complaint will be dismissed with leave to amend to provide more information.
25 Plaintiff must describe how the individual defendants violated his constitutional rights. He must
26 provide more detail as to how his ability to practice his religion has been burdened. For example,
27 he must describe what medicine or materials have been denied and how the denial interfered with
28 his ability to practice his religion. Simply attaching exhibits is insufficient.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of this case.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: November 9, 2016


NANDOR J. VADAS
United States Magistrate Judge